

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WISCONSIN ALUMNI RESEARCH
FOUNDATION,

Plaintiff,

SECOND AMENDED JUDGMENT

Case No. 05-C-0242-C

v.

XENON PHARMACEUTICALS,
INC.,

Defendant.

This action came before the court and a jury with DISTRICT JUDGE BARBARA B. CRABB presiding. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that judgment is entered granting summary judgment in favor of plaintiff Wisconsin Alumni Research Foundation:

- (1) on its claim for declaratory judgment that defendant Xenon Pharmaceuticals, Inc. owes plaintiff royalties because defendant negotiated a sublicensing agreement with Novartis Pharma AG;
- (2) on its claim for declaratory judgment that defendant granted a sublicense to Novartis;
- (3) on its claim for declaratory judgment that defendant breached the exclusive license agreement by (a) failing to make royalty and license payments due under §§ 4(B)(i) and 4 (B)(ii) of the exclusive license agreement; (b) failing to provide plaintiff with biographical and contact information regarding sublicensee Novartis; and (c) failing to include a statement in the Xenon/Novartis Collaboration and License Agreement that the agreement is subject to termination of the Exclusive License Agreement.
- (4) on defendant's counterclaim for declaratory judgment that defendant did not breach the exclusive license agreement;

- (5) on its claim that defendant owes it royalties under Sections 4(B)(i) and (ii) of the exclusive license agreement;
- (6) on defendant's counterclaim for declaratory judgment that defendant does not owe plaintiff royalties;
- (7) on defendant's counterclaim that plaintiff breached the exclusive license agreement by attempting to deprive defendant of its exclusive right to prosecute the joint patent application;
- (8) on defendant's counterclaim that plaintiff engaged in tortious interference with defendant's consulting agreements with Dr. Gray-Keller by preventing Dr. Gray -Keller from executing assignments;
- (9) on defendant's counterclaim that plaintiff breached the duty of good faith by seeking to prevent Dr. Gray-Keller from making assignments to defendant pursuant to the consulting agreement;
- (10) on defendant's claim that this lawsuit breached the Settlement and Release Agreement;
- (11) on defendant's counterclaim that plaintiff breached the duty of good faith by seeking to deprive defendant of the benefits of the research at the University of Wisconsin-Madison;
- (12) on defendant's counterclaim that plaintiff interfered intentionally with the Research Agreements and the Settlement and Release Agreement; and
- (13) on defendant's counterclaim for declaratory judgment that no other funds were used for defendant's research.
- (14) on plaintiff's claim to quiet title to the PPA compounds invention.
- (15) on plaintiff's claim for declaratory judgment that Dr. Grey-Keller's assignment to defendant is null and void.
- (16) declaring that plaintiff properly terminated the exclusive license agreement.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered

granting summary judgment in favor of defendant Xenon Pharmaceuticals, Inc.:

- (A) on plaintiff's claim that defendant breached the exclusive license agreement by failing to prosecute all the claims in the joint patent application;
- (B) on plaintiff's claim for declaratory judgment that plaintiff has the right to prosecute the joint patent application;
- (C) on plaintiff's claim the defendant breached the duty of good faith by inadequately prosecuting the joint patent application;
- (D) on plaintiff's claim that defendant breached the exclusive license agreement by refusing to license an Improvement to plaintiff;
- (E) on plaintiff's claim of conversion of property rights;
- (F) on plaintiff's claim of intentional interference with plaintiff's contractual relationship with Dr. Gray-Keller; and
- (G) on plaintiff's claim that defendant breached the duty of good faith when it converted the PPA Compounds invention to itself and interfered with Dr. Gray-Keller's obligation to assign the invention to plaintiff.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Wisconsin Alumni Research Foundation against defendant Xenon Pharmaceuticals, Inc., in the amount of \$300,000.00 as damages plus prejudgment interest in the amount \$73,414.76.

Approved as to form this 5th day of February, 2010.

Barbara B. Crabb
BARBARA B. CRABB, DISTRICT JUDGE

Peter Oppeneer
Peter Oppeneer, Clerk of Court

2/8/10
Date